

## Remarks

Applicants thank the Examiner for the comprehensive Action showing careful attention obviously paid to present matter.

Regarding the objections to the Specification, the typographical errors on pages 11 and 12 have been corrected. Applicants would also like to apologize for the application failing to provide either paragraph numbers or line numbers. While this lack was not objected to, it is nonetheless unusual for an application to have neither numbering technique; applicants apologize for any inconvenience this caused. If desired, a substitute specification providing paragraph numbers can be provided.

Applicants respectfully request reconsideration of the present U.S. Patent application as amended herein. Claims XXX have been amended. No claims have been added or canceled. Thus, claims 1-31 are pending.

## 35 USC §112

Claim 1-21 and 23-25 stand rejected under §112. **Claim 1**, as suggested by the Examiner, claim 1 has been amended to recite “a second server,” a corresponding amendment was made to **claim 12**. **Claim 3** has been amended to remove the spurious “by the first server.” Regarding **claim 8**, since the recited “storing efficiency operation” implies a communicative coupling between the client and the storage device, claim 8 has been amended to remove the reference to “local,” and a corresponding amendment has been made for **claim 18**. **Claim 9** has been amended to provide proper antecedent basis for the “first network resource.” A related amendment has been made to **claim 19**. **Claims 13-21** have been amended to correct the erroneous reference to an “apparatus” rather than the corrected reference to an “article.”

Regarding the objection to **claims 23** and **claim 28**, Applicants note that claim 23 and claim 28 do not appear to have the ambiguity mentioned. In particular, claim 23 recites a method of claim 22, further comprising (emphasis added):

determining said first efficiency rating based in part on first contacting, by the client, of the **first** server; and  
determining said second efficiency rating based at least in part on second contacting, by the first server, of the **second** server.

Similar language appears in claim 28. Applicants request these rejections be clarified if correct, or withdrawn if in error.

**Claim 24** and **claim 29** have been amended to remove the “of” objected to by the office, however, Applicants note that the phrase “maintaining ... of a rating table” is believed to be valid English, albeit not as cleanly worded as the language suggested by the Office.

### 35 USC §102

Claims 1-5, 10, 12-15 and 20 stand rejected under §102(e) as being anticipated by Watson (U.S. Patent No. 6,223,209). Applicants traverse the rejections for at least the following reasons, and request withdrawal of the rejections.

As discussed in the Watson Abstract and specification, in Watson, web pages are provided to a client, where a page is provided with links identifying a server deemed “closest” (col. 4 line 4) to the client based on an inspection of the client’s “IP address extracted from the client request packets” (col. 3 line 62). However, the Watson disclosure only enables two techniques for determining the “closest” server. The first technique requires maintaining a table cataloging physical locations of clients and servers (col. 4 lines 6-7). The second technique requires running a “trace route” or

"tracert" program to count hops between the client and the various potential servers (e.g., a main server and its various mirror servers). Neither of these techniques are what is recited in the claims as amended

Independent claims 1 and 12 have been amended to recite "wherein said determining the second efficiency rating is based in part on a predicted reliability rating associated with the second server" (see FIG. 6 discussion). As will be appreciated by the Office, neither Watson technique for determining client/server proximity has any teaching or hint of the recited predicted reliability of the connection between the client and the second server. Consequently, it is respectfully submitted that claims 1 and 12 presently stand in condition for allowance over Watson. Regarding dependent claims 2-11 and 13-21, the rejections of these claims have not been substantively addressed herein. However, it is submitted that in addition to further distinguishing features introduced in these claims, it is submitted these claims are allowable for at least the reason as depending from allowable base claims.

Claims 1-3, 7-10, 12-13, 17-20, 22-23, and 27-28 stand rejected under §102(e) as being anticipated by Logan (U.S. Patent No. 6,578,066). Applicants traverse the rejections for at least the following reasons, and request withdrawal of the rejections.

As discussed above, independent claims 1 and 12 have been amended to recite "wherein said determining the second efficiency rating is based in part on a predicted reliability rating associated with the second server." As with Watson, as best the Logan reference is understood by Applicants, Logan fails to teach the recited providing a first

efficiency rating and determining a second efficiency rating based in part on a predicted reliability rating associated with the second server.

As taught by Logan, health data, if available (see col. 6 lines 42-45), is passed **between switches** (col. 4 lines 47-55) appear to be virtual front ends for “real” servers; a client does not know it is talking to switch front ends (col. 4 lines 63-65). Health data appears to be shared between switches so they may decide whether they should hand off connections to a particular server switch (col. 6 lines 6-38). Although the interplay between the Logan switches and “real” servers is somewhat complex, based on a review of the cited portions of Logan relied on by the Office, and a cursory review of the rest of Logan, it is readily apparent that Logan fails to teach or suggest the recited (as amended) second efficiency rating based in part on a predicted reliability rating associated with the second server.

Consequently, it is respectfully submitted claims 1 and 12 presently stand in condition for allowance over Logan. Regarding claims 22, 27, as with claims 1 and 12, these claims have also has been amended to recite “wherein said determining the second efficiency rating is based in part on a predicted reliability rating associated with the second server”, and hence are allowable for at least the reasons as discussed above for claims 1 and 12. Regarding dependent claims 2-11, 13-21, 22-26, and 28-31, the rejections of these claims have not been substantively addressed herein. However, it is submitted that in addition to further distinguishing features introduced in these dependent claims, these dependent claims are allowable for at least the reason as depending from allowable base claims.

35 USC §103

Claims 11, 21-23, 26-28, and 31 stand rejected under §103 as being obvious over Watson and admitted prior art. Claims 6, 9, 16, and 19 stand rejected under §103 as being obvious over Watson in view of Emens (US Patent No. 6,606,643). Claim 24 stands rejected under §103 as being obvious over Watson and admitted prior art.

Of these rejections, only claims 22 and 27 are independent claims, and regarding these rejections, there is no teaching or suggestion in Watson of the recited (as amended) determining the second efficiency rating based in part on a predicted reliability of the second server. Consequently it is submitted the rejection of amended claims 22 and 27 is overcome and Applicants request its withdrawal.

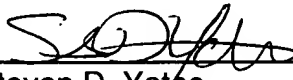
Regarding the rejection of dependent claims 6, 9, 11, 16, 19, 21, 23, 24, 26-28 and 31, in order to focus prosecution on the allowability of the independent base claims, the rejections of these dependent claims have not been substantively addressed herein. In addition to distinguishing features introduced in these claims, these claims are deemed allowable for at least the reason as depending from allowable base claims.

Conclusion

For at least the foregoing reasons, Applicants submit that the rejections have been overcome. Therefore, claims 1-31 are in condition for allowance and such action is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application. Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,

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